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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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BY: C. HANCE

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

STATE OF ARIZONA,

Plaintiff,

vs.

ANTHONY RICHARDS,

Defendant

P1300CR201600476

**MOTION TO DISMISS/MOTION TO
PRECLUDE and MOTION TO EXCEED
PAGE LIMITATION**

**(Oral Argument Requested)
(Hon. Tina Ainley)**

The Defendant, by and through Counsel undersigned hereby requests this Court to Dismiss this case, or, in the alternative preclude the following witnesses from the re-trial: Det. John McDormett, Paul Chastain, Craig Comstock and Joan Shattuck. This Motion is made pursuant to the Defendant's 6th Amendment Right to present a defense and to effective assistance of counsel. See: St. v. Pecard, 196 Ariz. 371 (Div. 1,1999), Washington v. Texas, 388 U.S. 14 (1967), In re Zawada, 208 Ariz. 232 (Ariz.,2004). Arizona Constitution, Art. 2 §24, the 5th, 6th and 14th Amendments to the U.S. Constitution, and the Arizona Constitution, Article 2 §§ 4, 23, and 24: specifically his Right to Effective Assistance of Counsel, and his Right to a Fair Trial.

The Defendant also moves for permission to exceed the page limitation in Rule 1.9 (c), Arizona Rules of Criminal Procedure, as it was necessary to summarize four post-trial depositions and to adequately outline and address the following issues:

1. Collusion permeated this case from the beginning.

Joan Shattuck is the sole reason her brother Larry Power's case was investigated. She continued even when she felt nobody was paying attention. From the beginning, she gathered information and sent it to the police. Joan gathered information and shared it with Craig Comstock and his girlfriend, Reni Hinsch. When police volunteer Paul Chastain chose to investigate the case, he used Joan Shattuck's documents. So did det. John McDermott. At the grand jury presentation the state used Joan Shattuck's theory of the case. *Everyone* in this case followed Shattuck's lead.

That there was collusion in this case – virtually from the very beginning – cannot reasonably be argued against. Dictionary.com defines collusion as a “secret understanding between two or more persons to defraud another of his or her rights.”¹ Craig Comstock described his relationship with Joan Shattuck as “*a crusade to see justice done.*” Shattuck described their relationship as a “team” and “*unified front.*” (Comstock Deposition, pg. 6, lns. 8-10, emphasis added)(Shattuck 2nd Deposition Pg. 11, lns 20-25, emphasis added).

Collusion permeated Shattuck's efforts to convict Anthony Richards. With Shattuck, Comstock, McDormet and Chastain, the collusion was aimed at depriving Mr. Richards of a fair trial. That state actors² participated makes it a violation of Due Process.

What happened after the Trial began was the tip of the iceberg. By that time, the collusive communications were commonplace. During the course of the new depositions, the state seemed to blame the defense for its witnesses talking to one another to rehearse their stories,

¹(<https://www.dictionary.com/browse/collusion?s=t>).

²It is the Defense position that Joan Shattuck is a state actor.

and secretly respond to questions asked by the Defense in the 1st Shattuck Deposition and various interviews, specifically with Shattuck, Chastain, McDormett, and Comstock. This blame stems from an alleged failure by the Defense to invoke the Rule of Exclusion at Joan Shattuck's Deposition on September 5, 2018. This argument carries no weight, because 1) the collusion was hidden from the Defense, i.e., ongoing emails, texts and conversations between the parties as outlined below, and 2) those secret communications were not shared with the Defense – which precluded effective Defense questioning and cross-examination (i.e., Shattuck's Deposition had already been completed), and 3) importantly, as the state admitted:

I can inform the court that, first of all, the State had admonished all its witnesses not to speak to each other. And Ms. Shattuck, on no less than three times, I think far more than three times by three separate individuals, she was instructed not to speak to other witnesses. She seems to have some difficulty complying with that directive. And we had an indication before the trial began she may be contacting witnesses. And that is why we went to great lengths to put it on the record or to make sure that she was clear on that point.

(Jury Trial Day 4, pg. 7, lns. 16-25, pg. 8, ln. 1).

In fact, Shattuck conceded that a potential witness told her they were not allowed to talk.

(Shattuck 2nd Deposition, August 14, 2020, *infra*).

In addition, the state conceded that the Rule of Exclusion had been violated:

But that is all of the information I have as it relates – the State will concede, though, it is a direct violation of the rule of exclusion of witnesses. And all parties involved in that conversation were admonished.

(Jury Trial Day 4, pg. 9, lns. 8-12).

Concerning the prejudice suffered by Mr. Richards, under no scenario can the cross-examination of Comstock, Chastain nor McDormett now be effective because of the wilful violation of the Rule of Exclusion started by Joan Shattuck. Denial of right of effective

cross-examination is a constitutional error of the first magnitude so that no amount of showing of want of prejudice could cure it. Davis v. Alaska, 415 U.S. 308, 318 (1974)³, citing Brookhart v. Janis, 384 U.S. 1, 3 (1966) and Smith v. Illinois, 390 U.S. 129, 131 (1968).

The Court noted:

My problem is I don't think that this bell can be unrung. There is just no way. If I – if we tell the jury that all this communication came forth, they have no way of really distinguishing what he really remembers versus what he was told from Ms. Shattuck anymore.

(Jury Trial Day 4, at pg. 14, lns. 7-12).

The Court added:

Here is the other thing that concerns me about this is the nature of the State's direct examination to begin with. You know. They are pulling out statements, do you remember? You know. You are pulling out various statements. Sometimes he can remember. Sometimes he would not. Now, she is pulling out other statements. And there's just no -- I don't see any way to -- there's a reason the rule is in place. And it is serious and significant. And now I don't see any way to unring that bell. I just don't see any way -- this is -- I just don't.

(*Id.*, pg. 16, lns. 18-25, pg. 17, lns. 1-4).

And now I don't know what he [Comstock] really remembers or what Ms. Shattuck told him or any of that.

(*Id.*, pg. 17, lns. 23-24).

The remedy for all of this is not as simple as a violation of the Rule of Exclusion, Rule 615, Arizona Rules of Evidence, where preclusion of the witnesses, Shattuck, Comstock,

³Read properly, however, Davis does not support an automatic reversal rule, and the above-quoted language merely reflects the view that on the facts of that case the trial court's error had done "serious damage" to the petitioner's defense. Del. v. Van Arsdall, 475 U.S. 673, 683 (U.S. 1986)

Chastain, and McDormett⁴ would be necessary. In addition to the violation of the Rule, agents of the state failed to disclose their secret communications: ongoing emails, texts and conversations, in violation of Brady v. Maryland.

A Brady violation occurs when the government fails to disclose evidence materially favorable to the accused. See 373 U.S., at 87, 83 S.Ct. 1194. This Court has held that the Brady duty extends to impeachment evidence as well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676 (1985), and Brady suppression occurs when the government fails to turn over even evidence that is “known only to police investigators and not to the prosecutor,” Kyles, 514 U.S., at 438, 115 S.Ct. 1555. See *id.*, at 437, 115 S.Ct. 1555 (“[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police”). “Such evidence is material ‘if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,’ ” Strickler v. Greene, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (quoting Bagley, *supra*, at 682, 105 S.Ct. 3375 (opinion of Blackmun, J.)), although a “showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal,” Kyles, 514 U.S., at 434, 115 S.Ct. 1555. The reversal of a conviction is required upon a “showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.*, at 435, 115 S.Ct. 1555.

(Youngblood v. W. Virginia, 547 U.S. 867, 869–70 (2006).

In this case, the failure to disclose information that would go to bias, dishonesty, and secret communications negatively effected everything from pre-trial interviews to the depositions. Due process was violated, thus the case should be dismissed.

⁴As the court of appeals observed, “[p]otential remedies for violating an exclusion order include contempt, allowing cross-examination regarding the violation, instructing the jury regarding the violation, or under the right circumstances, precluding the testimony.” Spring, 241 Ariz. at 461 ¶ 22, 388 P.3d at 855; cf. Allison, 4 Ariz. App. at 500–01, 421 P.2d at 933–934 (upholding a trial court's preclusion of two material fact witnesses' testimony for violation of the common law rule of exclusion). Spring v. Bradford, 243 Ariz. 167, 174 (2017)

2. Relevant History of the Case

As noted above, Joan Shattuck was responsible for the spread of information in the case. Her information was widely used, and never questioned.

Paul Chastain, who had used Shattuck's information, eventually forwarded his documents to Det. John McDormett. (McDormett Deposition, Pg. 5, lns. 17-21). Chain of custody for these documents was an issue the defense planned to pursue during trial. In pretrial interviews, officers were unable to identify where documents came from. Joan Shattuck said that she supplied all police officers with the same documents. (Shattuck 2nd Deposition, pg. 14).

Prior to trial, on February 29, 2020, Paul Chastain e-mailed Joan Shattuck and requested information on the motorhome "mystery man" because "You may be asked this question in court," and "Not to scare you two, I have the following. If you scan a tape and see something you think We didn't know. I found a few in Crabtree's tape." Chastain concludes the e-mail by asking Shattuck to call his cell phone (number included), and states:

HERE IS A request that is unusual.
We can still investigate the case. Since us ending the case ...
I'm just fishing, I'm in the office all day today and I'm not awake yet.
We are going forward with the case as planned, The judge denied any extensions
... Again, I'm just fishing. I expect you will not find anything new. Call me if you
have any questions. The case is very good. John and I feel good about it.

(Bates, 001693-001697).

It is unknown who if anyone directed Chastain to do this. Subsequently, there was a phone call between Chastain and Shattuck. Shattuck documented the call in a text chain to Craig Comstock on March 3, 2020, just three days before the start of the trial. In one of the texts

Shattuck asked Craig Comstock to find a printer so she can send him transcripts and pictures.

Joan wrote: "Also, want to remind you that, critical testimony will be about the phone call you made to Anthony – what date, what you said, and what Anthony said ... Do you remember all that?" (March 3, 2020 text, Bates 001661-001666.) Joan reminded Craig Comstock of another date that was critical, "The call where you asked him if Larry was in Oregon and he said he and the guy left already ~ The date is critical too." Shattuck must have supplied Comstock with transcripts. Shattuck also admitted:

Just got off the phone with Paul
I'm burnt

No one knows we have been talking

I would suggest you continue reading the
conversations and see
what memories they strike up ~
Call or text if you have questions~

(March 3, 2020 Texts, Bates # 1658-1669, emphasis added).

Joan Shattuck knew that the April 28th date was important. At some point, Shattuck realized that the date of April 28 was not as incontestable as she originally believed. Shattuck is correct that date is a key part of information. Prior to trial, the Defense had spent considerable effort to dispute the April 28th phone call. In its presentation to the Grand Jury the state had used an April 28th phone call between Craig Comstock and Anthony Richards as proof of the Defendant's deceitfulness.

McDormett: On April 28th, '07, the same day that the purchases in Bend, Oregon were made, Mr. Comstock called Mr. Richards looking for Powers because he was worried about Mr. Powers.

Again, if you recall early on when Mr. Powers first arrived at – in Arizona on April 7th, he called Mr. Comstock and said that they would get together in a couple of days just as they had back in the January/February trip that Mr.

Richards and Mr. Powers made.

Again, Mr. Powers never contacted him. Mr. Com – Mr. Powers never contacted Mr. Comstock, so Mr. Comstock took it upon himself to contact Mr. Richards. Mr. Richards told him that Mr. Powers had left with some guy in a motor home.

He never said anything, even though that was the same day-- never said anything to him about Mr. Powers being with him during a shopping trip to Bend, Oregon that he and Powers allegedly had.

Now, here's a friend that's calling and a friend of Mr. Powers that's calling and he is worried about his friend. Mr. Richards is stating the same day that he had just been on a shopping trip with him and he never tells the friend that, yeah, I was just with him, we just went on a shopping trip. That's one problem.

(Grand Jury Transcript, pg 25, lns. 13-25, pg. 26, lns. 1-10).

The story of the April 28th phone call originated in Off. Diffendaffer's report. This report said that Reni Henshaw told Diffendaffer that Anthony called Craig Comstock on April 28th. This story was never confirmed by any other source. In response to *a leading question*, Craig Comstock agreed that he had called Anthony Richards on April 28th. (Trial Day 3, pg. 13-15). In a defense interview Craig Comstock said that Joan Shattuck was the first one that called him after he hadn't heard from Larry Powers in April.

Williams: There was a suspicion at some point that you hadn't heard from him in a while.

Comstock: That's right.

Williams: Tell me about that.

Comstock: Well we just wondered where he was at. You know, he's never called us...

Williams: So, after a while how long would it be before you started worrying about what was happening with Larry?

Comstock: Uh, we just kind of acknowledged to one another isn't that kinda weird we haven't heard from him.

Williams: Right

Comstock: What's with this?

Williams: And so...

Comstock: It must have been maybe a month or so and I think I got a phone, I

think Joan was the first one to call me.

(Defense Interview of Comstock, 33:58-35:05).

Because of the violation of the Rule of Exclusion, the Defense will never be able to effectively cross-examine Mr. Comstock or Joan Shattuck about this. They are now rehearsed.

After Craig Comstock's direct examination at Trial, Joan Shattuck set out to correct and firm up the question of the date of that phone call. The prejudice extends to all people that Shattuck contacted: Craig Comstock, Detective McDormett and Paul Chastain.

This Court and the state must recognize and appreciate how the coaching, collusion and peer pressure effected cognitive factors like memory, and thus the accuracy and truth of witness testimony.

Shattuck: I believe I called him or I e-mailed him [McDormett], I don't know which, because while I was looking through, you know, paperwork, I came across this date that was conflicting with what I thought the date was another time and I went, "Oh, what is this? I better let them know that."
So I sent that to them and I never heard back from him and I also told Paul that, too.

(Shattuck 2nd Deposition, pg. 32, lns. 10-17).

Williams: Is this a text message that you sent?

Shattuck: Yes. I sent -- I called Paul, I believe, and I told him that I found this *crazy inconsistency in my notes*.

Shattuck: *And I sent that to John McDormett*, I believe.

Williams: Did you send it to Craig Comstock?

Shattuck: Oh, I might have.

Williams: This says at the top, it says [as read]: Subject. It was June 28th, not April 28th.

Shattuck: Yeah. If I sent it to Craig, *I send it to all of them, yeah*.

Williams: Okay. What is the significance of June 28th, not April 28th?

Shattuck: Okay. Originally, there was a phone call between Craig and Anthony, and I have always thought it was on April 28th. And I was reading, you know, looking over, probably looking for some of that information for Paul, I don't know why I was looking, and I saw that it said June 28th. And I was like oh, my goodness, what's happening here. And that's when I figured well maybe John or Paul could figure

it out because I was like very confused.

(Shattuck 2nd Deposition, pg. 40, lns. 17-25, pg. 41, lns. 1-15).

Williams: Do you recall when you sent this?

Shattuck: I don't recall when I sent it but if it says that, then. . .

Williams: Well, how about the day? Do you recall the day?

Shattuck: Not on that. Pardon me?

Williams: How about the day? Do you recall the day that you sent it?

Shattuck: No. Absolutely not. I don't remember any of that. I just remember I was going through a lot of paperwork and I saw that and I went, oh, my gosh. What is this all about? Because I thought it was an important piece of evidence, that phone call, and all along I felt it was very important. And so, when I saw that, I just read it and went oh, my gosh. I instantly just went we got to figure this out and I sent it to everybody.

Williams: Do you recall whether or not you sent more than one text, more than this? More information than just this?

Shattuck: I don't recall.

(Shattuck 2nd Deposition, pg. 42, lns. 2-21).

Shattuck: Right. Right. That's why I sent that to them, to John and Paul and everybody.

(Shattuck 2nd Deposition, pg. 45, lns. 23-24),

3. Chastain and Shattuck

This case was a "cold case" when it was chosen by Paul Chastain for his investigation.

Paul Chastain's investigation consisted of getting Joan Shattuck's information, and asking her to outline what she saw as inconsistencies.

Shattuck: I believe so. And this is just a guess. I'm not positive when it was, when -- I know it was during the time that he was prepping and getting information and, I think that was the information that -- it was the list. He asked me to make a list of contradictions from all of the conversations that I had.

It was not an easy thing to do. It was really difficult. And that's very likely how I wrote it wrong because I had to go through all the conversations. I had to listen to some of the audios, and they're hard to listen to. And I was trying to pull out whatever I could that could even possibly be a contradiction, you know.

There's probably some things in there that may not be contradictions that may just remotely resemble. I was just putting information together, just gathering whatever I had that remotely worked, and that's what that was report was.

(Shattuck 2nd Deposition , pg. 46, lns. 20-25, pg. 47, lns. 1-12).

Thus, Joan Shattuck was an investigator in the case. Through this, Chastain and Shattuck communicated before important events. Shattuck said it is “very” possible she called Chastain before her 1st deposition. (Shattuck 2nd Deposition, pgs. 5-6). Chastain talked to Shattuck several times in the week before trial in March 2020. Shattuck said during her deposition that Chastain had asked her to look up some information about the “MHG”, or the “motor home guy.” (*Id.*, pg. 30, lns. 20-25, pg. 31, lns. 1-23).

On February 24, 27 and 29, 2020, Paul Chastain received an e-mails from Joan and Randy Shattuck with information. This information was not disclosed to the Defense prior to Trial. (Bates # 001692-001719). From the conversation in the e-mails we know that this information was sent at Chastain’s request. Then, on the eve of Trial, March 3, 2020⁵ at 7:36 p.m., Joan Shattuck texted Craig Comstock and said, “Just got off the phone with Paul I’m burnt...”. (Bates # 001667). It is impossible to tell how much of Paul Chastain’s testimony would be Joan Shattuck information and how much would be from the Chastain investigation.

It is not surprising then that when Joan Shattuck was helping Craig Comstock study for his cross examination, and she came across a contradictory date, *she called Paul Chastain:*

Chastain: Oh, yes. Yes. She called me and left a message on my cell phone, I mean, on the cell phone, about a date change that she was worried about, probably – not worried about, but she thought she had another clue for me, I think. And what happened was I had no

⁵One day before Trial.

contact with her. And then, at a later time, I think it all happened at once.

Williams: Did she tell you what that clue was?

Chastain: No. Another date.

Williams: Okay.

Chastain: I never -- I never followed up on it.

(Paul Chastain Deposition, pg. 29, lns. 17-25, pg. 30, lns. 1-2).

Williams: Okay. So, there's a date involved and that Joan Shattuck wanted to give somebody a date. Who did she want to give the date to?

Chastain: On the voicemail, she wanted to give it to me.

Williams: Okay.

Chastain: And then Comstock, and then I called McDormett, and McDormett told me that this isn't good.

(Paul Chastain Deposition, pg. 38, lns. 1-7).

After the phone message it is very murky about who called whom and how these violations of the Rule got passed up the chain to the County Attorney. Chastain said that he told Craig Comstock to call Det. McDormett. Chastain said that he did not believe he talked to Joan Shattuck, and thinks that Det. McDormett may have also received a phone call from Shattuck that weekend. (Paul Chastain Deposition, pg. 46, lns. 1-12). At some point Paul Chastain said he did call Shattuck and leave a message on her phone that they could no longer talk. (Paul Chastain Deposition, pg. 45, lns. 1-10).

4. Shattuck and McDormett

Joan Shattuck was also the source of information for Det. McDormett. During Det. McDormett's first defense interview there was a request for additional information. If it was not clear that Shattuck was acting as an agent for the state before, the Defense request became an e-mail from Det. McDormett to Shattuck which exposed the Defense questioning in the interview, and asked for Shattuck to address the issue:

From: John McDormett
Sent: Thursday, March 15, 2018 1:01 PM
To: [redacted]
Cc: John McDormett <John.McDormett@yavapai.us>
Subject: Larry

Hi Joan,

I hope you are doing well and the situation with your husband is improving. I had a defense interview with Richard's attorney. Basically its gives the defense an opportunity to ask law enforcement questions-it's very standard. Anyway he was asking questions about Larry's income. We know of the \$400.00 a month he was getting from the rental. I also had info he had an inheritance. Plus I know he did handyman type work. The attorney asked how much Larry was paying on his house and things of that nature. He had also asked me if I heard anything from anyone that Larry was selling drugs. (I told him the only person that inferred anything like that was Anthony-and we know why Richards is doing that). It's obvious what he is getting at. ***Don't worry-they don't have much so they will try and attack the investigation and Larry.*** I believe this will backfire on them if they do try it.

However, in the interest of thoroughness, I wanted to ask you if you had any details on the inheritance and any other sources of Larry's income. And if you have access or knowledge what his debts may have been, like a mortgage. (I know he liked to pay things off ASAP).

Don't sweat it if you can't provide me with much-I just thought I would ask.

Thanks and take care.
Det John McDormett #5472

(Bates # 001683-1684).

Those e-mails were not disclosed to the Defense until October 2, 2020, nearly 7 months after the Trial began.

On September 5, 2018, Joan Shattuck's 1st deposition took place. Two weeks before, on August 20, 2018, at 8:53 a.m. McDormett sent an e-mail to Joan Shattuck which states:

Hello. Hope you are doing well. I believe I know what you are referring to as I have my notes and your notes of the 7/23/07 conversation. Richards deflecting blame is well documented whether it be Comstock, the mystery man, or his allegations that Larry was involved in everything from drugs to gun running. However, if you would like to email a brief synopsis of what specifically you are

referring to I will look it over.

(Bates #1686).

From this e-mail it is unclear what started this conversation, because there was four months between April 16, 2018 to August 20, 2018. But, the end result was the state, through Rhonda Grubb, sending a "CD of all the recordings" by Fed Ex so Shattuck could prepare for her deposition. (Bates #1689).

In her Deposition, Shattuck downplayed her conversations with Det. McDormett prior to trial. Once again it is unclear what "little heads up" she is referring to here:

Williams: ... Before the trial, did you discuss anything with McDormett?
Shattuck: Only that little heads up that I sent him.
Williams: All right.
Shattuck: I didn't have -- I never talked to him.
Williams: All right. That's the e-mail?
Shattuck: I believe it was an e-mail.

(Shattuck 2nd Deposition, pg. 33, lns. 11-17).

As a victim Joan Shattuck, was listening to the trial via telephone. During the Trial, Craig Comstock agreed that he had called Anthony Richards on April 28th. (Trial Day 3, pg. 13-15). Joan became concerned because she came across a note that said that this phone call happened on June 28th. It was important to Shattuck that this date be corrected, to prove that Anthony Richards was lying.

Once again Shattuck was dodgy on the details of how she passed on this information.

Williams: Is this a text message that you sent?
Shattuck: Yes. I sent -- I called Paul, I believe, and I told him that I found this *crazy inconsistency in my notes*.
Williams: Right
Shattuck: *And I sent that to John McDormett*, I believe.
Williams: Did you send it to Craig Comstock?

Shattuck: Oh, I might have.
Williams: This says at the top, it says [as read]. Subject. It was June 28th, not April 28th.
Shattuck: Yeah. If I sent it to Craig, *I send it to all of them, yeah.*

(Shattuck 2nd Deposition, pg. 40, lns. 17-25, pg. 41, lns. 1-3).

Williams: All right. What about Detective McDormett; did you have any discussions with Detective McDormett before this deposition?
Shattuck: I believe I called him or I e-mailed him, I don't know which, because while I was looking through, you know, paperwork, I came across this date that was conflicting with what I thought the date was another time and I went, "Oh, what is this? I better let them know that." So I sent that to them and I never heard back from him and I also told Paul that, too.
Williams: All right.
Shattuck: Yeah.
Williams: Do you know whether or not Paul ever referred you to McDormett?
Shattuck: I don't know.
Williams: Okay.
Shattuck: But it --
Williams: And I'm talking recently.
Shattuck: I don't remember -- pardon?
Williams: I'm talking recently that Chastain would have referred you to McDormett. Did that happen? Do you know?
Shattuck: Recently meaning just --
Williams: Yeah.
Shattuck: -- before the trial, you mean?
Williams: Before --
Shattuck: That's the only time I talked to him.
Williams: Let's split it up. Before the trial, did you discuss anything with McDormett?
Shattuck: Only that little heads up that I sent him.

(Shattuck 2nd Deposition, pg. 32, lns. 7-25, pg. 31, lns. 1-13).

Later, Det. McDormett said that he believed the only person that received a copy of the contradiction was Craig Comstock. (McDormett Deposition, pg. 27, lns. 20-25, pg. 28, lns. 1-13).

4. The state coached Craig Comstock:

Prior to his Trial testimony Det. McDormett contacted Craig Comstock. (McDormett, pg. 7-8). This most likely included discussing probable lines of cross- examination that Comstock should expect. Friday's Trial testimony ended following Comstock's direct examination and the state stayed and talked to Comstock for at least 5 minutes that night.

Williams: And did you have a conversation with Comstock about what he should expect on cross examination?

McDormett: It would make sense that I would have, but I do not recall specifically.

Williams: Okay. How late do you estimate you guys were there talking to Comstock after the trial ended on Friday?

McDormett: Five minutes, maybe. I mean --

Williams: Okay.

McDormett: -- that's just a guesstimate.

(McDormett, pg. 17, lns. 12-21).

Giving Craig Comstock reports to review may be appropriate prior to testimony, but the state coached Comstock on his direct examination. In a text from Craig Comstock to Joan Shattuck, Craig Comstock wrote:

Just spent 45 minutes going over case with Casy [Harris]. I pretty much only need to say yes or no. I go on at 1:30

Bates #1673).

The state coached Comstock, then asked virtually all leading questions, to cover his lack of memory. This was a plan, and, the only people who know about it were the state and Comstock. Prior to his trial testimony the state spent 45 minutes cuing up Craig Comstock with what they considered crucial evidence⁶. The Defense repeatedly objected to the leading

⁶Harris: I'd like to move on to the second recorded conversation you had with the defendant that occurred on September 24, 2007. Do you remember that conversation?

questions⁷, to no avail. This abuse of leading questions is the subject of a separate Motion.

5. Comstock and Shattuck

Joan Shattuck, Craig Comstock and Reni Hinsch considered themselves a team. Craig Comstock described their relationship “*a crusade to see justice done*”, and Shattuck described their relationship as a “team” and “unified front.” (*supra*).

They shared recordings, and at times Joan Shattuck would listen in while Craig Comstock talked to Anthony Richards. (Shattuck 2nd Deposition, pg. 12)

Joan Shattuck believed it was “very possible” that she called Craig Comstock before her 1st deposition. We know that Shattuck called Comstock after that 1st deposition because Comstock remembers a conversation Joan told him that she had with attorney Craig Williams about a clock. (Comstock Deposition, pg. 38-39).

Joan Shattuck remembered a “short call” with Comstock after he got his trial subpoena. (Shattuck 2nd Deposition, Pg. 58-60).

The texts that the state supplied between Joan Shattuck and Craig Comstock started at 6:26 a.m. on March 3, 2020, the morning before trial began. Once again, there had obviously been a previous undisclosed conversation before this text began:

Comstock: *Somewhat...*

Harris: Did the defendant tell you in the second conversation that Larry had purchased a Shaker table?

Comstock: Yes.

Harris: Did he tell you that Larry had told him that he didn't want the Shaker table and to just take this because it was defective?

Comstock: *I think that's what went down. Yeah.*
(Trial Day 3, pg. 29, lns. 11-25, pg. 30 and pg. 31, lns. 1-4, italics added).

⁷Trial Day 3, pg. 18, lns. 7-10, pg. 20, ln. 25, pg. 26, lns. 2-3

Hi Craig-The photos *would not go through* to your 'messages' for some reason...
Can you send me an email address?
Also, want to remind you that, *critical testimony will be about the phone call you made to Anthony- what date, what you said, and what Anthony said ...*
Do you remember all that?
Thanks, J

(Bates #1658-1660).

Joan Shattuck continued to coach Craig Comstock through these texts:

The call where you asked him if Larry was in Oregon and he said he and the guy left already~The date is critical too

(Bates #001661).

After Craig Comstock answered with "?" (a question mark), then Joan Shattuck offered to send transcripts of the recorded conversations between Comstock and Mr. Richards over email. Craig Comstock did not have an email, causing Shattuck to instruct him to find someone who had an email that would print the transcripts out for him. (Bates # 001661-001666). At 7:36 p.m. that night, Shattuck told Craig Comstock that she "Just got off the phone with Paul I'm burnt...*No one knows we have been talking.*" (Bates #001667, italics added).

From this text it is obvious that Joan Shattuck is aware that she should not be colluding with Craig Comstock to prepare his testimony.

Keeping in mind that the Defense did not possess nor know about the text messages (*supra*) before Shattuck's 2nd Deposition, it is evident that she was not truthful nor accurate about coaching Craig Comstock about details of his testimony:

Fisher: Do you recall ever telling him how to testify?
Shattuck: No. Never.
Fisher: Did you ever tell him or correct him on facts that he anticipated testifying to?
And by that, let me give you an example, although not a specific

one. Let's say, for instance, he was going to say, "I recall that the defendant said this on this date," and you said, "No, that occurred on this date." That's more of what I'm looking for. Do you recall ever correcting his proposed testimony?

Shattuck: No. No. Oh, no.

Fisher: And do you recall him ever asking you how to testify?

Shattuck: No. He never did.

Fisher: So nothing of that nature occurred during the deposition or during your conversations prior to his testimony?

Shattuck: No.

(Shattuck 2nd Deposition pg. 61, lns. 15-25, pg. 62, lns. 1-8).

Neither Comstock nor Shattuck were forthcoming nor truthful about the communications that took place while Comstock was waiting to testify (and while Shattuck was listening to the Trial). On March 6, 2020, at 7:48 a.m., Comstock texted Shattuck: "I'm listening to a tape now, getting rehearsed ya know." (Bate #001669). At some point that morning Comstock tried to call Shattuck. Shattuck texted Comstock and said, "Hey-They're letting me listen in to the trial. *Sorry I couldn't answer your call I'll be in there with you* (double heart emoji)." (Bates # 001671, emphasis added). Shattuck then told Craig Comstock that Dianna (Dianne Jensen) would be after the 15 minute break. (Bates # 001672).

At 11:49 a.m. Craig Comstock told Shattuck:

Just spent 45 minutes going over case with Casy. I pretty much only need to say yes or no. I go on at 1:30. Those tapes are crucial, had no idea

(Bates # 001673-1674).

Trial ended that day after direct examination. Immediately Joan Shattuck texted Craig Comstock:

You did good! It's a blessing that you have more time to study now~ (thumbs up emoji)

(Bates # 001675-001676).

Joan Shattuck testified that Craig Comstock had called her right after he was a witness that Friday and he was upset. (Shattuck Deposition, pg. 34, Ins. 8-11). Comstock said that he was excited when he got off the stand so he called Shattuck, and then they started talking about "that date". (Comstock Deposition, pgs. 51-52).

After this conversation, Comstock was concerned about facing cross-examination and Shattuck agreed to a phone call on Saturday to help him study. This meeting on Saturday was **2-3 hours** where Shattuck went over all of her notes and explained to Comstock what they meant because she was concerned he couldn't remember thing (Shattuck 2nd Deposition, pgs. 47-58).

Shattuck: And so then, I was like, "Well, I can help you." And he said, "Okay." And so that's when I said, "Yeah." So. . .

Williams: So that's on Friday night and then you had another conversation on Saturday?

Shattuck: Yeah. So then we decided, "Well, tomorrow, let's jump on and I'll help you do this." So, on Saturday, I called -- let's see, I think I called him. I can't say for sure who called who on Saturday. I believe I called him. And for -- I was trying to remember how long. I don't know positively. I'm -- my guess would be **two or three hours** we were on the phone going over the conversations. And I would read them and then at another -- and he would say, "Well, I don't understand that. What was that about?" You know, and I would just try to refresh his memory and that's all we were doing. It was no information that he didn't already have. Everything we went over was -- as far as you know the conversations with Anthony, they were -- I mean, they were obviously ancillary because they were his conversations, so I was just trying to clarify for him and go over his memory is what I was doing there.

Williams: All right. And did you talk to him on Sunday?

Shattuck: Sunday we agreed, "We'll do this again tomorrow, because we were both really burned and really difficult. It's very hard reading over that stuff --

Williams: Right.

Shattuck: -- emotionally and every other way. So we were supposed to talk Sunday, and I had a lot to do and I

called him in the afternoon and he said, "Hey, I've been doing it myself and I feel really good about this. I -- I -- I feel better about what I remember, so I think everything is going to be fine." So we didn't go over everything, and that was the end of the Saturday conversation, I mean the Sunday conversation.

(Shattuck 2nd Deposition, pg. 35, lns. 3-25, pg. 36, lns. 1-14). (See also pgs 34-37).

Joan Shattuck wouldn't commit to a number of phone calls or texts over that weekend.

(Shattuck 2nd Deposition, pg. 47, 59-60). During his deposition Craig Comstock was evasive and unwilling to commit to when he and Shattuck had talked that weekend. Comstock would answer "I couldn't be certain," "May have been," "Assume we had a few," and "I don't remember."

(Comstock Deposition, pg. 64-65). Comstock waffled on whether Shattuck was trying to clarify dates. (*Id.*, pgs. 56 and 58). Comstock feigned confusion about the photo printout of the infamous text provided by the state (re: the mistrial), and if it was actually taken from his phone:

Williams: All right. So you don't recall whether or not she -- she texted you this, right? At some point on that weekend?
Comstock: Well, *it doesn't look like my telephone.*
Williams: Right. So she texts you this, and you don't recall when that came in and the pictures we have of this phone don't tell us, it just says 12:59 p.m., so shortly after noon, is when this text came in. Do you recall what day that was? Because I can't see it on your phone --
Comstock: No.
Williams: -- when it was.
Comstock: No, I don't.

(Craig Comstock Deposition, pg. 62, lns 21-25, pg. 63, lns. 1-8, italics added).

Comstock again feigned ignorance regarding his mid-trial calls with Shattuck:

Williams: And then, at some point when you left, you went and called Joan to tell her about the day's events?
Comstock: Uh-huh.
Williams: All right.
Comstock: Yeah.

Williams: And you don't know if that was Friday night, Saturday, or Sunday, or am I confusing you?

Comstock: Oh, it had to be one of those days, sir. *I imagine it would have been one of those days*, because, you know, it was in the moment.

Williams: I gotcha.

Comstock: *It could have been. It could have been that Friday, could have been that Saturday, but maybe that Friday. I'm willing to go that far.*

Williams: Yeah.

Williams: And were you aware that while we were doing the trial, there was a phone sitting up by the judge in which Joan could listen to the entire trial?

Comstock: I was aware, yeah.

Williams: Okay. Did she call you and talk to you about what was testified to?

Comstock: What she had heard that --

Williams: Yeah.

Comstock: (Phone ringing.) Sorry about that.

Williams: That's all right.

Comstock: Did she call me or did I call her?

Williams: Did she call you at all during those four or five days between then, because we would have come back on a Wednesday? So Friday night you're done, so you got Saturday, Sunday, Monday, Tuesday, Wednesday or --

Comstock: We would come back on a Wednesday, I thought it was the very next day. It was a Monday, wasn't it? I was going to come back and be cross examined by you?

Williams: I don't think it was a Monday.

Comstock: That's not how that works?

Williams: I don't think it was that day?

Comstock: As soon as I get in there, I found out that the thing has been called a mistrial.

Williams: Okay.

Comstock: So somebody, you know, told somebody that I made a -- I asked the question, obviously.

(Craig Comstock Deposition, pg. 53, lns. 18-25, pg. 54, pg. 55, lns. 1-7).

The one regret that Comstock vocalized was that he wished he had asked Josh Fisher about that date and not Joan Shattuck:

Comstock: I kind of wish I had never asked her that. I should have asked Josh⁸, who told me

⁸Correcting the witness' memory right before cross-examination was not appropriate.

the next day, when -- the Monday, I guess you say it was. He said it was the 28th of April.

(Craig Comstock Deposition, pg. 52, lns. 18-22).

While it is still unclear how many calls and how long Craig Comstock and Joan Shattuck spent on the phone over that weekend. The Defense requested their phone records. That request was denied. Those records were vital to get to the truth, such as exactly how many calls were placed. What is clear, however, was that there was more collusion:

Williams: Okay. So concerning Friday, Saturday and Sunday, those three dates were most definitely discussing refreshing his memory, assisting him in his testimony?

Shattuck: Well, what they were is going over the telephone conversations one by one, not -- not -- you know, not affecting his testimony, but just going over the conversations and reminding him what had happened in those that we had discussed many, many, many times through the 13 years in the past.

There wasn't anything said as far as that part that would have affected his testimony. It was just reminding him what we had both heard in these conversations, what I already knew that he knew. There was no information given. This is all stuff he already knew, and I wasn't -- like I didn't say, "You got to say this or do that." It was just line by line. He was just reading it. It was fine. We went on. And he said, "Well, what did that mean?"

Some of those conversations would be like three words. They'd be like Larry, Shaker table, shed. You know. And he's going, "What was that? What was that about?" And I would just refresh him if I knew. Some of them I didn't remember.

But when I knew, I would tell him. I would say, "Oh, that's about Larry did this, took the Shaker table and did this." So I was only trying to refresh him of what he had talked about in these conversations.

Williams: Okay. And then, the text message, you sent him the text message that had information in it in addition to what you talked about on the phone, correct?

Shattuck: Yeah. And I'm pretty sure what that was, too, because it was -- it was just this big crazy thing because I just found that date, that June 28th date, and I went that -- what is this? This doesn't make sense to me.

It was right in the same time frame when, you know, Craig and I were doing this, and also at the same time frame when Paul had asked me to research stuff. It was all happening at once. I had papers all over the dining room table and I believe I found it and I sent it to -- so it was on my mind. And I sent it to Craig that, wow, I just -- there was this thing, we made that phone call, and it was different. And I think -- I think he didn't even know maybe what I was talking about. I don't know. But he said, "What do you mean?" And he -- he says he didn't understand what I was saying. So I said, "I'll send it to you." And I totally forgot I sent it to him until you pointed it out today, but that is the reasoning behind it.

(Shattuck 2nd Deposition, pg. 65, lns. 9-25, pg. 66, pg. 67, lns. 1-7).

Comstock admitted that he and Shattuck talked after the mistrial. (Craig Comstock Deposition, pgs. 70-71).

6. Who told Law Enforcement

What may be the most confusing is who notified whom, and when. After Joan Shattuck and Craig Comstock could not figure out the April 28th vs. June 28th puzzle they decided to call law enforcement for clarification on those dates.

Paul Chastain said that Comstock called him prior to trial, and Chastain told Comstock to just tell the truth. (Paul Chastain Deposition, pg. 31, lns. 2-13). Craig Comstock then called him again and in this call Comstock told Chastain he had been talking to Joan Shattuck. Paul Chastain said that he referred Craig Comstock to Det. McDormett. (*Id.*, See also pg. 35-7). Chastain said that he also received a phone call, or at other times a voice mail from Shattuck, maybe Sunday night. (*Id.*).

Comstock said he doesn't remember talking to anyone about this until he received a phone call from Det. McDormett and was told McDormett was coming to take a photograph of his phone. (Craig Comstock Deposition, pg. 66, lns 7-15). Comstock said that the only time he

talked to Paul Chastain was when he was told he couldn't talk to him. (Craig Comstock Deposition, pg. 42, lns. 21-23).

Joan Shattuck said that she called Paul Chastain and told him "I found this crazy inconsistency" and that she sent it to John McDormett and Craig Comstock. (Shattuck 2nd Deposition pg. 40-41).

It is still quite unclear due to non-committal answers by the deposition witnesses, but there *was* a conversation in which everyone found out that Joan Shattuck had sent a text with information regarding the date in question to Craig Comstock.

Paul Chastain said that he called Det. McDormett about Joan Shattuck's and Paul Chastain's dilemma with the date, and Det. McDormett told him this isn't good. (Paul Chastain Deposition, pg. 38, lns. 1-7, pg. 41). This was on Sunday or Monday, and then Det. McDormett told him they would go to the County Attorney's office the next day. (Paul Chastain Deposition, pg. 46, lns. 23-25, pg. 47, lns. 1-8). Paul Chastain also said that when he showed up for work *Det. McDormett had independent knowledge of the conversation* that had happened and that he was on his way over to take a picture of Craig Comstock's phone. (*Id.*, pgs. 47-48)

Det. McDormett said that Paul Chastain called him on Monday evening, and told him he had just gotten off the phone with Craig Comstock. (McDormett Deposition, pg. 18-19). Det. McDormett was sure that Paul Chastain had immediately contacted him when he found out. (*Id.*, pg. 43, lns. 6-9). Det. McDormett went in the next morning and immediately told Deputy County Attorney, Josh Fisher:

And so, following morning, this -- so now it's like 7:00 p.m. or whatever, on a holiday night. I wasn't going to call Josh and bother him and have him go lose sleep that night, so I wound up going in -- when I came in the next morning, went

in the office, I immediately told -- went to Mr. Fisher's office and I told him. And then I know that he immediately called you after that.

And then we had Mr. -- well, Paul Chastain come in. Because I said I received this from Paul, so Josh wanted to hear from Paul. And then, at some point, Mr. Comstock was contacted.

(McDormett, pg. 19, lns. 4-15).

7. Lack of Investigation Into the Violation of the Rule.

After Deputy County Attorney Josh Fisher was notified that the Rule of Exclusion had been violated, he sent Det. McDormett to get a picture of the message on Craig Comstock's phone. However, when Det. McDormett went out to take a picture of the text message *he did not further look at Craig Comstock's phone -- nor seize the phone --* to see the totality of the violation(s) of the Rule of Exclusion:

Williams: And did you look for other text messages from Joan Shattuck on there?

McDormett: I don't believe I did.

Williams: Okay.

McDormett: One of the reasons being is when this was sent to Craig, it wasn't something that we had to seek out, like he was trying to hide something. He immediately -- he immediately brought it to Paul's attention. Because, again, Paul was the guy that was the main communicator for these guys. But he brought it to Paul's attention. Paul is like, "Okay. I need to talk to the case agent about this." And so, that's -- so I didn't really -- because he brought that to our attention, I didn't think he would be hiding anything.

Williams: Okay. So you don't know whether or not there was other text messages on his phone?

McDormett: There -- I may have -- I may have scrolled through, sir. I may have. I'm telling you I can't definitively say that I did.

(McDormett Deposition, pg. 29, lns. 24-25, pg. 30, lns. 1-18) (See also: pg 31-32).

Det. McDormett offers this excuse for not check the call logs of Shattuck and Comstock:

Williams: Okay. Thank you. So my question is, you didn't look at the call log,

so we don't know how many times Craig and Joan talked Friday in the evening, Saturday, Sunday, or Monday? We don't know how many times they talked, correct?

McDormett: Well, based on -- again, I'm going to refer back to the fact **that Craig brought this to our attention fairly quickly, was concerned over the contact that Joan had with him.** If I thought that there -- that he was trying to cover up something or hide something, then I probably would have delved deeper into it, but I thought, you know, he's being honest, he brought this to our attention. So I believe what he tells us when he says he only had this one conversation, and then she sent him this, and then he became concerned about that, and then relayed that to Paul.

Williams: Okay. That's your understanding of how it went with Craig, right?

McDormett: Right. And that's things from my perspective and how I was and what my mind set was regarding the issue.

Williams: But you don't know for certain that there wasn't more than one text?

McDormett: I can't -- again, I can't say for certain that I scrolled up, but I believe I did. I didn't see anything regarding any of the issues that would cause concern. I do know that I did not check the call log, at least I don't believe I did, so I'm going to say I didn't. And -- so could they possibly have had other conversations, maybe, but I believe Craig would have relayed that because he relayed this information to Paul.

(McDormett Deposition, pg. 34, lns. 10-25, pg. 35, lns. 1-16).

On the contrary, Comstock and Shattuck only contacted law enforcement *to verify an "important date,"* NOT to confess their violation of the Rule of Exclusion. Thus, Det. McDormett's failure to check the call logs because he felt somehow that Comstock had "brought this to our attention fairly quickly" is fictional and simply not true. Comstock admitted he thought the Rule was a suggestion, and most certainly was not "confessing" out of the goodness of his heart. Comstock contacted law enforcement *seeking information, not giving it.*

There is no explanation for why Det. McDormett did not seize Craig Comstock's phone. It remains unclear why the state did not insist that Comstock's phone be seized, and the call logs

checked. There is no explanation for why Det. McDormett did not contact Shattuck nor seize her phone to verify that she was not contacting other witnesses (which she admitted she did). (*Id.*, pg. 29-30, 36). McDormett testified that the only person he was aware of receiving that information was Craig Comstock. (*Id.*, pg. 28). This, in contradiction to Shattuck's testimony that she sent it to *everyone*. (Shattuck 2nd Deposition, pg. 40, lns. 17-25, pg. 41, lns. 1-15).

Finally, Det. McDormett and Deputy County Attorney Josh Fisher, contacted Comstock and warned him Det. McDormett was coming out to take photos of the text on his phone. (McDormett Deposition, Pgs. 28-29). That's coaching.

8. No Change in Behavior:

Even after the mistrial on March 11, 2018, Craig Comstock did not understand that he could not violate the Rule of Exclusion. On that day, Craig Comstock texted Joan Shattuck, "Keep the faith..." (Bates # 001678). There was also birthday wishes on March 30th. (*Id.*). What is unknown is how many phone calls were made. The Defense requested their phone records. That request was denied. Those records were vital to get to the truth, such as exactly how many calls were placed.

Nevertheless, the state continued to coach Comstock by feeding him information. After the mistrial, at the request of Deputy County Attorney Josh Fisher, Det. McDormett went to Craig Comstock's home. On the front porch Det. McDormett provided Craig Comstock with tapes and transcript *to be reviewed before a retrial*. (McDormett, pgs. 8-9 and 39-40). This was done prior to any deposition testimony which planted false memories of issues at the Deposition. The Court previously acknowledged Comstock's memory issues:

Court: But I am not even sure Mr. Comstock would know what he remembers

now versus what he was told.

(Jury Trial Day 4, pg. 18, lns 5-6).

The Court issued this order after the mistrial:

The Court: Mr. Comstock, the proceedings are over for now. I wanted to let you know as we move forward, though, the court has issued an order that none of the witnesses are to talk to each other until the trial is concluded or we have a resolution. Okay?

Comstock: Yes, Your Honor.

The Court: And that excludes the investigators for each side because they may want to come and talk to you and that sort of thing. But just so you know, moving forward, I have issued an order none of the witnesses are to speak to each other. Okay?

Comstock: I understand.

(*Id.*, pg. 30, lns. 17-25, pg. 31, lns. 1-4).

Still, after scheduling the Deposition, Comstock called Det. McDormett, *seeking advice on how to handle the upcoming deposition.* (McDormett Deposition, Pg. 11, lns. 12-16). This was clearly outside of the Court's order. Det. McDormett said that he told Comstock,

“To be honest and to answer the questions as they're asked. *Don't stray too far from anything.*’ And that's what I recall.”

(*Id.*, pg. 12, lns. 15-18, italics added).

Comstock also remembered that Det. McDormett told him that Craig Williams wasn't happy. (Craig Comstock Deposition, pg. 66, lns 22-25, pg. 67, lns. 1-6). Det. McDormett coached Comstock by discussing probable lines of cross- examination and prodding him to rehearse his testimony:

McDormett: The next conversation that I recall having with him was when he called me before his deposition and you know his manner of speaking. He was like asking me if he should be concerned, blah, blah, blah, and I was -- I know blah, blah, blah is probably not going to get there. He asked me what he was concerned about and -- or what he should be concerned about, and I said -- I said, "Look, you're going to be asked questions about this, you know what the issue is about. So be honest, tell

them what you were told, what you were sent." And I just told him, "Be honest, you know, and just try to have your ducks in a row and have your memory refreshed what happens up there so you're not stumbling and things of that nature."

(McDormett, pg. 39, lns. 22-25, pg 40, lns. 1-10).

These exchanges were clearly outside of the Court's order. Comstock violated the Court's Order by calling McDormett for advice regarding the Deposition, and Det. McDormett violated the Court's Order by coaching Comstock

9. Invoking the Rule

During the argument over the Motion for Mistrial the state avowed that the witnesses had been admonished. (Jury Trial Day 4, pg. 7, lns. 16-25, pg. 8, ln. 1). Still, the witnesses failed to obey that warning. (Shattuck Deposition, pg. 7 and 9). Collusion was more important than the warning.

Joan Shattuck testified that her understanding from Paul Chastain was that after her deposition was played was when she could no longer talk to the other witnesses.

Shattuck: And Paul had mentioned to me that when – and this is what – this was what was going on, *he said when my testimony -- my deposition gets viewed at trial, then I can't talk to anybody*, I'm not allowed to talk to anybody after that. And I can say when I did talk to Craig, it was after that, and I recognize that I wasn't supposed to. But prior to that, again, I literally did not realize that I wasn't supposed to be talking to anybody. I mean, I may have been told it, but for some reason it didn't register in my mind whether it was or not.

(Shattuck 2nd Deposition, pg. 38, lns. 16-25, pg. 39, lns. 1).

This is not a logical nor factual, since Joan Shattuck admitted much earlier in time her neighbor told her they could no longer talk after the neighbor received her trial subpoena.

Shattuck: No. Nope because she got subpoenaed and she actually said -- she did call me, she got subpoenaed to be a witness, and she had been in England. And she -- I guess,

it happened while she was in England. And, anyway, she did call me and talk to me and she was, like, wondering why she was subpoenaed and we talked about that. And then, at the end of the conversation, she said, "Oh. Well, I'm not supposed to talk with anybody." And so I said, "Okay." That's literally the last time we've talked.

(Shattuck 2nd Deposition, pg. 50, lns. 8-18).

Joan Shattuck also texted Craig Comstock prior to trial that “*No one knows we have been talking.*” (*supra*). This is an acknowledgment of three things: 1) she had been told not to talk, and 2) coaching Comstock was more important than warning not to talk, and 3) It is an admission of wrongdoing.

Det. McDormett said he usually tells witnesses to not discuss this with anybody, but he does not recall if he did it in this case. (McDormett, pg. 9, lns. 24-25, pg. 10, lns. 1-5).

Coaching Comstock was more important.

Conclusion

Throughout this case there has been an underbelly of information exchange that was not shared with the Defense. Discussions between the state's witnesses have been common after Defense interviews and Depositions. The Defense was not informed of this, and was not given copies of the emails, texts and phone calls until after the Depositions regarding the mistrial had taken place.

Despite the rehearsed misdirection and misleading answers (i.e., “I don't recall”) those Depositions did reveal the great extent witnesses went to deprive Anthony Richards of a fair trial. The *crusade to see justice done* ignored admonitions, hid communications and colluded throughout the case and probably continue up to this day.

The state is responsible for its witnesses. What happened in this case can be

characterized as “at the least an impermissibly negligent action.” McElroy v. State, 154 Ga.App. 638, 639, 269 S.E.2d 497, 498 (1980). (Ex parte Faircloth, 471 So. 2d 493, 497 (Ala. 1985))

As outlined above, the violations of the Rule and the Court’s orders by the state’s witnesses fall “under the right circumstances,” mandating precluding their testimony. Spring v. Bradford, 243 Ariz. 167, 174 (2017). In addition to the violation of the Rule, agents of the state failed to disclose their secret communications: ongoing emails, texts and conversations, in violation of Brady v. Maryland.

The Violation of the Rule of Exclusion was highly prejudicial to the Defendant. Even after 4 Depositions the dodgy answers to straight-forward questioning casts real doubt on the veracity of the witnesses and real doubt what happened and when. These facts are clear:

- 1) In preparation for Trial, Shattuck, McDormett and the state coached Craig Comstock.
- 2) Joan Shattuck and Craig Comstock shared information about what was happening in Trial while Craig Comstock waited to testify.
- 3) The day he was to testify the state met with Craig Comstock for 45 minutes to review his testimony. During this time the state and Craig Comstock came up with a plan to ask leading questions, because of Comstock’s very real memory issues.
- 4) After Craig Comstock completed direct examination and prior to cross examination, Joan Shattuck and Comstock texted and had several phone calls over the weekend.
- 5) One of those phone calls between Shattuck and Comstock was on Saturday following Comstock’s Trial testimony, and ***it lasted 2-3 hours***. While we don’t know everything that was discussed during those hours of coaching and prodding, one thing we do know is that they reviewed the Shaker Table in the shed, *which had nothing to do with April 28th*. (Shattuck 2nd Deposition, pg. 66). The Shaker Table was the subject of leading questions addressing lack of memory during Direct Examination:

Harris: I'd like to move on to the second recorded conversation you had with the defendant that occurred on September 24, 2007. Do you remember that conversation?

Comstock: *Somewhat...*

Harris: Did the defendant tell you in the second conversation that Larry had purchased a Shaker table?

Comstock: Yes.

Harris: Did he tell you that Larry had told him that he didn't want the Shaker table and to just take this because it was defective?

Comstock: *I think that's what went down. Yeah.*

(Trial Day 3, pg. 29, lns. 11-25, pg. 30 and pg. 31, lns. 1-4, italics added).

- 6) As outlined above, Shattuck, Comstock, Chastain and McDormett colluded with hidden and ongoing emails, texts and conversations. Following Defense interviews and the 1st Shattuck Deposition these four witnesses communicated and colluded to counter-act the Defense.

Concerning the prejudice suffered by Mr. Richards, under no scenario can the cross-examination of Shattuck, Comstock, Chastain nor McDormett now be effective because of the wilful violation of the Rule of Exclusion started by Joan Shattuck. (*supra*).

Due process was violated. The case should be dismissed.

For the reasons and evidence stated above, it is hereby requested that this Court to Dismiss this case, or, in the alternative preclude the following witnesses from the re-trial: Det. John McDormett, Paul Chastain, Craig Comstock and Joan Shattuck.

RESPECTFULLY SUBMITTED this November 6, 2020.

By

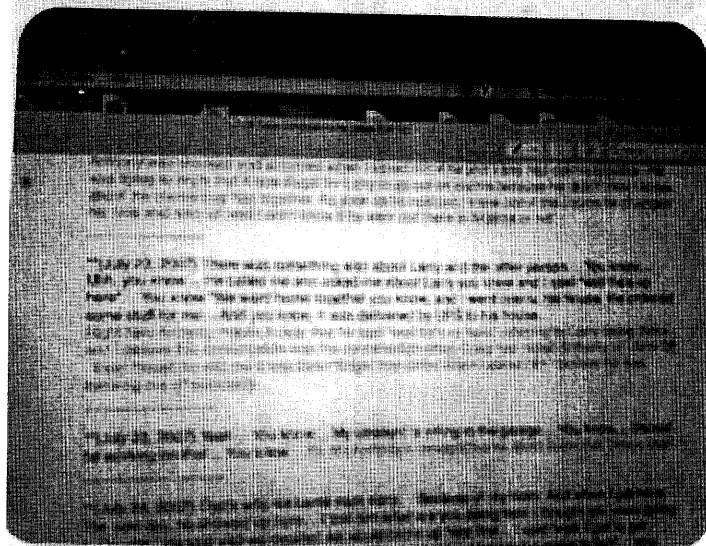

Craig Williams
Attorney for the Defendant

Copies of the foregoing delivered this date to
Hon. Tina Ainley, Judge of the Superior Court
Josh Fisher, Casi Harris, Yavapai County Attorney's Office

By



<Subject: It was
June 28, not April
28...>



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